

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

EDWARD ROBERTS, LLC, d/b/a
ERlifescience,

Plaintiffs,

v.

INDIANA ECONOMIC DEVELOPMENT
CORP.,

Defendant.

Case No. 1:22-cv-00985-PKC-RLM

DEFENDANT’S RESPONSE TO PLAINTIFF’S STATEMENT OF ADDITIONAL MATERIAL FACTS WHICH CREATE A GENUINE ISSUE TO BE TRIED

Defendant, by counsel, responds to Plaintiff’s statement of additional facts:

79. The contract terms Bosso drafted for the purchase from Edward Roberts do not specify that the “fit test standards” referred to were IEDC’s “version” of a fit test. (PLAIN-TIFF005193-94; Bosso Dep., p. 145).

Response: Dispute. The contract speaks for itself and provides that “[i]f the respirators do not pass fit test standards Indiana can seize the respirators and turn them over to proper authorities.” (Undisputed Material Fact 26.) The contract did not specify what “fit test” would be applied.

80. On October 13, 2020, Paglia emailed Dweck and instructed him where to send invoices for the masks. (IEDC_000692-93).

Response: Admit.

81. Edward Roberts sent IEDC three invoices. (PLAINTIFF005459, 5466, 5472).

Response: Admit.

82. On November 12, 2020, Dweck emailed Paglia and Bosso asking about the past due invoices. (IEDC_000692).

Response: Admit.

83. IEDC did not inform Edward Roberts that it would not be honoring the contract until December 4, 2020.

Response: Dispute. The contract provided that IEDC could “refuse respirators for any reason.” (UMF ¶ 26.) Bosso described the reasons that IEDC rejected the masks. (*Id.* ¶¶ 41-46.) The federal government seized the masks and requested that Bosso cut off communications with Edward Roberts. (*Id.* ¶¶ 47, 51.) A federal agent then conducted an undercover investigation. (*Id.* ¶¶ 53-55.) IEDC then obtained a letter from the masks manufacturer that it had not conducted business with Edward Roberts. (*Id.* ¶ 56.) On December 4, 2020, IEDC notified Edward Roberts of the reasons it rejected the masks. (*Id.* ¶ 57.)

84. On November 12, 2020, Dweck emailed Paglia to inquire about the three outstanding invoices, with due dates of October 24 and October 29, 2020. (IEDC_000692).

Response: Admit.

85. In March 2023, Defendant “admit[ted] that no written purchase order was ever sent to Edward Roberts.” (Defendant’s Amended Answer, ECF Doc No. 31, ¶ 16).

Response: Admit.

79. Robert Paglia testified that he sent the alleged purchase order, with order number 00260-0020001172, to Edward Roberts. (Paglia Dep. Ex. Q; Paglia Dep. p.39).

Response: Dispute. At page 39 of his deposition, Paglia did not testify that he sent a purchase order to Edward Roberts. Mr. Paglia testified that he sent a purchase order *number* to Edward Roberts, but that he did not send the purchase order:

5	Q.	Do you recall sending the purchase
6		order number to Edward Roberts --
7	A.	Yes.
8	Q.	-- in this e-mail?
9	A.	Yes.
10	Q.	We looked at an exhibit, Exhibit Q.
11		Do you recall ever sending the
12		purchase order that's marked as Exhibit Q to
13		Edward Roberts?
14	A.	No.

80. Luke Bosso testified that the alleged written purchase order, with order number 00260-00200011723, was provided to Edward Roberts (Bosso Dop. Ex. K, Bosso Dep. pp.200-201).

Response: Dispute. Bosso testified that Exhibit K was “the purchase order.” (Bosso Dep. p.200.) He did not testify that he sent it to Edward Roberts. (*Id.*)

Respectfully submitted,

/s/ **Bradley M. Dick**

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2024, a copy of the foregoing was electronically filed using this Court’s e-filing system.

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s/**Bradley M. Dick**

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